

October 16, 2012

Scott E. Porter
Colantuono & Levin, PC
300 S. Grand Avenue, Suite 2700
Los Angeles, CA 90071-3137

Re: Your Request for Advice
Our File No. A-12-147

Dear Mr. Porter:

This letter responds to your request for advice on behalf of the Sierra Madre City Council and Planning Commission regarding the conflict-of-interest provisions of the Political Reform Act (the “Act”).¹

QUESTION

May the City of Sierra Madre utilize the segmentation process approved in the *White* Advice Letter, A-09-79 and the *Murphy* Advice Letter, No. A-07-031, in order to avoid conflicts of interest for members of the city council and the planning commission that own property that will be impacted by the general plan amendment.

CONCLUSION

Your question solely concerns whether you may establish a procedure to segment the decisions. You propose using the same procedure offered and approved in the *White* Advice Letter. We agree, use of this procedure would comply with the conflict of interest provisions of the Act. Your members may participate in the general plan decisions consistent with the procedure set forth above.

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

FACTS

In 2008, the Sierra Madre City Council created the city General Plan Steering Committee. The Committee has been meeting regularly since 2008 in an effort to reach consensus on what final recommendation it would make to the Planning Commission on how the General Plan should be revised and updated.

The Committee is close to making its recommendation to the Planning Commission. As currently drafted, the General Plan amendment would revise all of the elements of the general plan except the housing element. Such amendment will include amendments to the land use element, including the land use map.

Upon receipt of the Committee's recommendation, the Planning Commission will conduct a series of meetings to consider the proposed General Plan. The Planning Commission may opt to remand some matters back to the Committee for further consideration, or it may simply opt to make its own decisions, and to then opt to pass a resolution to formally recommend that the City Council approve (or deny) the proposed amendments to the general plan. Upon receipt of the proposed General Plan by the City Council, the City Council will conduct a series of meetings to determine whether to adopt a revised General Plan, and in what form.

You stated that because the entire general plan is under review, it is extremely likely individuals reviewing the general plan will at some point have prohibited conflicts of interest. As a result, absent a special rule, many times there could not be a final vote on whether to approve the general plan as a whole, because such a vote would require voting on something that directly affects the public official's financial interests.

You propose using the following procedure set forth in the *White* and *Murphy* Advice Letters.

(1) Identification of Abstention Areas. Establish "abstention areas," defined as properties within 500 feet of real property in which a public official has an economic interest.

(2) Staff Presentation. When the agenda item for the general plan update is called, the public hearing will be opened. Staff will give a presentation, at which time the members of the legislative body may ask questions, but they will not be expected or encouraged to express any opinions.

(3) Public Testimony. After the staff presentation, public testimony will be heard, presenting evidence, argument and opinion on the proposal. Members of the legislative body may ask questions, but they will not be expected or encouraged to offer opinions.

(4) Staff final comments. After the public testimony has been heard, staff will present closing comments and answer any final questions by members of the legislative body. At this point, deliberations on the proposed update will begin.

(5) Identification of Abstention Areas. “Abstention areas” for each member will first be identified.

(6) Matters within the Abstention Area. Assuming at least one member has identified an abstention area, the other members will be asked if any of them would propose any change to any proposed land use designation, including zoning designations and minimum building densities, within any of the abstention areas (other than their own). If one or more members indicate a wish to propose changes within an abstention area, the affected member will step off the dais and leave the room. The proposed change will then be discussed and the matter decided by the remaining members, after which the affected member will return to the dais.

(7) Matters outside Abstention Areas. When there are no more proposed changes to any abstention area, the members will be asked if any of them would propose any change to any land use designation not within an abstention area. If so, these changes will be discussed and decided by all members.

(8) Changes to Goals, Policies and Implementation Measures. The members will next be asked if they would propose any change to the text of the goals, policies and implementation measures contained in the general plan update. Any such proposal will be discussed and decided by all members, after which the public hearing will be closed.

(9) After the public hearing is closed, all members will vote first on approval or disapproval of the entire Final Environmental Impact Report, including any amendments necessitated by changes to the land use designations and goals, policies and implementation measures. All members will then vote on the entire proposed general plan update.

ANALYSIS

Your questions presuppose a conflict of interest exists for your officials and that neither of the exceptions in Regulation 18700 applies. Thus, we do not apply the eight-step process set forth in Regulation 18700(b) to your question.² Please note, if a councilmember or planning commissioner has a conflict of interest in a decision at a public meeting, then he or she must: (1) publicly identify the financial interest immediately prior to discussion of the item, as detailed

² The eight-step process: (1) Determine whether the individual is a public official. (2) Determine whether the public official will be making, participating in making, or using or attempting to use his/her official position to influence a government decision. (3) Identify the public official's economic interests. (4) For each of the public official's economic interests, determine whether that interest is directly or indirectly involved in the governmental decision. (5) Determine the applicable materiality standard for each economic interest. (6) Determine whether it is reasonably foreseeable that the governmental decision will have a material financial effect on each economic interest identified. Determine whether an exception applies, either because (7) the reasonably foreseeable financial effect is distinguishable from the effect on the public generally, or (8) the public official's participation is legally required.

in Regulation 18702.5(b); (2) recuse himself or herself from discussing, voting on, or otherwise influencing the matter; and (3) leave the room until after the discussion, vote, or conclusion of any other disposition of the matter. (Section 87105.) Special rules for closed sessions, consent calendars, absences, and speaking as a member of the public regarding personal interests are discussed in Regulation 18702.5(c) and (d).

Your question solely concerns whether you may establish a procedure to segment the decisions. You propose using the same procedure offered and approved in the *White* Advice Letter (set forth above in the facts). We agree; use of this procedure would comply with the conflict of interest provisions of the Act. Your members may participate in the general plan decisions consistent with the procedure set forth above.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini
General Counsel

By: John W. Wallace
Assistant General Counsel
Legal Division

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